

Tina Rosenberg writes about the case that the cover calls "The World v. Dr. Kovacevic" in Sunday's New York Times Magazine. It's long. Copyright 1998 The New York Times Company The New York Times April 19, 1998, Sunday, Late Edition – Final Section 6; Page 46; Column 1; Magazine Desk

**Defending The Indefensible**, By Tina Rosenberg.

Tina Rosenberg, who writes about foreign affairs for the editorial board of The Times, is the author of "The Haunted Land: Facing Europe's Ghosts After Communism."



Front left: Anthony D'Amato; Rear left: Dr. Milan Kovacevic

The last time the world got a glimpse of Milan Kovacevic, he was guarding the portals of hell. He was a swaggering, beefy, profane man in a secondhand U.S. Marines shirt, and he was explaining to the television cameras why Serbs could never be secure until non-Serbs were removed from what he considered Serb territory. It was August 1992 in Prijedor, a city in northwest Bosnia and Herzegovina. A small group of reporters wanted permission to enter Omarska, a concentration camp not far from Prijedor. Omarska was the most notorious camp of the Bosnian war. Reports had already emerged that the guards there did not merely kill Muslim and Croat inmates but beat and tortured them to

death with singular sadism and personal brutality. Kovacevic told the reporters they could visit Omarska but said that they would find "not concentration camps but transit centers," and that what they were witnessing was "a great moment in the history of the Serbian nation."

Three years later, on a Radio Prijedor program commemorating that great moment, he boasted, "I'm not afraid of any of those 21 cells in The Hague." There are actually 24 cells in the jail to hold the accused at the International Criminal Tribunal for the Former Yugoslavia in The Hague. Since July of last year, one has been occupied by Milan Kovacevic. When he goes on trial on May 11, he will be the first man brought to justice at The Hague on charges of genocide, a crime considered the most heinous in human history, and one that is likely to carry the maximum penalty the tribunal can dispense, a life sentence. Kovacevic is depressed and suicidal according to a psychiatrist who interviewed him. He has developed heart problems and has had two, possibly three, strokes. When I saw him recently, in a courtroom at The Hague during a hearing on his case, it was hard to believe he was 56. He looked 70.

At the time Kovacevic issued his challenge to the tribunal, he was the director of Prijedor's General Hospital. At the height of the Bosnian war, however, he had been an anesthesiologist and, more significantly, the vice chairman of Prijedor's Crisis Staff, a Serb council that took control of the city in April 1992, after the Serb Republic broke away from Bosnia. He had little reason to fear those jail cells at The Hague. There had been no international courts with the power to punish individuals since the tribunals that were established to try the war crimes of World War II.

In some respects, the tribunal for the former Yugoslavia that the United Nations Security Council voted into existence in May 1993 (a tribunal for Rwanda was added 19 months later) has more legitimacy than its predecessors in Nuremberg and the Far East. It is not a court judging the vanquished, but an effort to try all the parties in the former Yugoslavia accused of committing serious crimes. It was established not by powerful victor nations, as Nuremberg and the Far East tribunals were, but by a truly international body that represents virtually all of the world's countries. And it rests on a more advanced body of international law, one that has adopted the Geneva Conventions on warfare and formally outlawed genocide, which is now defined as acts committed with the intent to partly or wholly destroy a national, ethnic, racial or religious group.

Yet it is understandable why Milan Kovacevic (pronounced ko-VATCH-eh-vitch) did not take the tribunal seriously. The reason it won crucial backing from the Clinton Administration was that it could give the impression that Washington -- that the West -- was doing something about the war in Bosnia without putting Western lives in danger. Moreover, the absence of victors' justice carried with it a debilitating absence of victors' powers -- or of a vanquished. The most powerful men publicly indicted -- the Bosnian Serb wartime leader Radovan Karadzic and his military commander Ratko Mladic -- remain free, as do 44 other indicted Serbs and 2 Croats.

Perhaps one illustration of the world's lack of commitment to the tribunal is that it was built with only a single courtroom. The tribunal has held just one full trial, of Dusko Tadic, a guard at Omarska, one of the camps that Kovacevic is charged with helping to set up. On May 7, 1997, Tadic was acquitted on several counts, but found guilty on 11 counts of crimes against humanity and war crimes, and sentenced to 20 years. (He is appealing to the tribunal's five-judge appellate chamber.)

In the last year, however, the tribunal has become a serious and even feared force for justice in Bosnia. The shift occurred last summer, when NATO and United Nations troops began arresting accused criminals, including, on July 10, Milan Kovacevic. British Special Forces soldiers entered Prijedor's hospital, arrested Kovacevic in his office and flew him to the Netherlands. The same morning the infamous former Police Chief of Prijedor, Simo Drljaca, was killed in a shootout with his would-be captors. NATO soldiers do seem willing to arrest suspects who are not likely to shoot back. Earlier this month, two men accused of having helped run Omarska were arrested in Prijedor. And pressure from NATO may be one reason Karadzic is said to be negotiating his own surrender.

Kovacevic's capture also represented the public debut of a new practice, the sealed indictment: his name was on a secret list, the existence of which is now disturbing the sleep of many in the former Yugoslavia who do not deserve a good night's rest. A court designed to give the impression of doing something -- about Bosnia and about justice, ethnic hatred and human rights in the post-cold-war world -- is actually doing something. The Hague tribunal is building two new courtrooms and is scheduled to start 11 trials this year.

But the tribunal will not provide justice, or help break the cycle of ethnic killings in the former Yugoslavia, or have any global impact on human rights if it is not perceived to be holding fair trials. What this means, above all, is that it must pay scrupulous attention to the rights of the accused. Defending those accused of war crimes at The Hague is complicated for many reasons that go beyond the usual quandaries faced by attorneys representing clients charged with heinous crimes. These cases must be investigated far from the courtroom, often without cooperation from pertinent local authorities who disdain the tribunal and may fear arrest themselves. Politics is a constant presence, as the tribunal is a world stage. Any judgments about criminal responsibility are of particular concern to those Serbs, Croats and Muslims who feel their ethnic group is in the dock alongside the defendants and want the world to endorse their understanding of what happened in the former Yugoslavia -- their notions of truth and history.

Thus there is the temptation for an attorney to mount not just a detailed legal defense of an accused war criminal -- he wasn't there, or wasn't in charge -- but also a public information campaign to assert the victimhood of a whole people. None of the lawyers at Nuremberg defended their clients by recycling the Nazi propaganda that the Jews deserved extermination because they were a threat to the Germans. But Kovacevic's lead attorney, Dusan Vucicevic, a Serb emigre who practices law in a Chicago suburb, wants to use the Yugoslav equivalent of this myth. When I traveled with Vucicevic (pronounced

vu-CHEECH-eh-vitch) to Prijedor not long ago, he was preparing a defense that argues, among other things, that the Serbs of Prijedor were provoked by Muslim threats -- the same spurious message that, broadcast nightly on Serb television, incited people to kill their Muslim neighbors. "What the Muslims tried to do in Bosnia is what happened in Armenia in 1915," he said, referring to the Turkish genocide of Armenians. "The Serbs were preparing to defend themselves. There was no way to control things."

Vucicevic's belief that stories of Serb victimization could help acquit his client is strongly opposed by Anthony D'Amato, an international-law expert at Northwestern University School of Law and Kovacevic's co-counsel. But the notion that the Serbs killed Muslims to defend themselves against a coming Muslim onslaught remains the reigning one among many Serbs in Bosnia and elsewhere. The racist myths of Nazi Germany were discredited after the war, but the Yugoslav wars have probably strengthened the sense of victimization and hatred among the involved ethnic groups. This, more than anything else, perhaps, points up the difference between the Nuremberg and The Hague tribunals, and raises the question of what Kovacevic's trial, and those of the others, can actually do to establish the truth, prevent the rekindling of ethnic warfare in Bosnia or provide a legal framework to help the world take its pronouncements about punishing evil seriously.

On July 30, 1997, Vucicevic happened to be visiting family in his hometown of Cacak, Serbia, about 60 miles from Belgrade. The TV news that night showed Kovacevic being arraigned at The Hague. The two men were distantly related. And Vucicevic, who is 50, had gone to high school in Cacak with Kovacevic's wife, Ljubica. Shortly after the broadcast, she called Vucicevic and asked him to defend her husband.

Vucicevic was hesitant. He told Ljubica that he was not an international-law specialist but that he would try to find her one. Vucicevic practiced law -- mostly personal injury, some criminal defense -- in Oakbrook Terrace, a Chicago suburb. The Chicago area is home to America's largest Balkan population, with a quarter million Serbs alone, and his clients were mainly other Yugoslav emigres. He left Yugoslavia in 1974, while on a ski trip, and settled in Chicago, where he worked at first as an anesthesiologist. (He and Kovacevic had actually attended the same medical school in Belgrade.) When he got bored with that, he went to law school, and opened his own practice in 1989.

Upon returning from Serbia last summer, Vucicevic called the offices of some well-known criminal lawyers, including Gerry Spence and Alan Dershowitz. "But he was too small a fish," Vucicevic said of Kovacevic. (Dershowitz had several conversations with the biggest fish, Radovan Karadzic, but has not yet agreed to represent him, citing a policy of not working for fugitives.) Then someone suggested that maybe Vucicevic could work with Anthony D'Amato, a widely respected law professor and advocate of an international criminal court. D'Amato, 61, is the opposite of Vucicevic: short and trim where Vucicevic is big; precise, controlled and soothing while Vucicevic is voluble and excitable. (D'Amato has likewise had other lives. He was the co-producer of the original Broadway production of "Grease" and wrote three musicals with his wife that were staged in Chicago.)

"My initial reaction was that he's got a right to a lawyer, but not to me," D'Amato said recently over dinner at an Italian restaurant near the tribunal building. But he went with Vucicevic to The Hague last September and met with Kovacevic. This is D'Amato's account of the meeting: "Doctor, are you telling me you didn't know about this?" D'Amato asked Kovacevic about the concentration camps established in and around Prijedor while he was an official there. Kovacevic said he knew nothing until media reports filtered back into Prijedor. When he found out, Kovacevic said, it sickened him.

Why didn't you resign?" D'Amato asked him.

I tried, Kovacevic told him. Kovacevic said he went to Simo Drljaca, the Police Chief. "He said he would personally put a bullet through my head if I quit," Kovacevic told D'Amato.

D'Amato agreed to help Vucicevic defend Kovacevic. D'Amato's motives are similar to those of many of the tribunal's lawyers who are not ethnically affiliated with the former Yugoslavia: for international legal scholars like D'Amato, it is tempting to play a role in shaping an international court.

"If I were to win this case, it may help the tribunal," he said. "It seemed to me from the beginning very important that they acquit some people. What divides me from the Serb lawyers is that they want to slam the tribunal."

Early on at least, Vucicevic seemed to be such a lawyer. "It's a kangaroo court," he said of the tribunal during our first phone conversation.

And what are Vucicevic's motives? I asked D'Amato. "He's a patriot," D'Amato said, not seeming to mean it as a compliment. I asked D'Amato if he and Vucicevic got along. He smiled. "His heart is in the right place, and he brought me onto this case," he said.

A few miles outside Prijedor, the highway passes Kozarac, once a largely Muslim village, now a ghost town. A month after the Serbs took over Prijedor in April 1992, Kozarac was shelled, and its inhabitants were removed to the Prijedor concentration camps. Their homes have since been looted and blown up. Today the carcasses of houses stretch for miles.

In Prijedor, there are no visible signs of the war. The city, with a population of 30,000, looks like many others in the former Communist world, with neighborhoods of pretty cottages and a downtown with identical five-story apartment buildings and hideously massive architecture. However, since the war, and the imposition of economic sanctions, its industry and jobs have evaporated. In the cafes, men sit over tiny cups of coffee all day; the stores have few customers.

Until the spring of 1992, Prijedor's population was fairly balanced between Muslims and Serbs, with a small number of Croats. Thirty percent of the townspeople married outside their ethnic group. Yet Prijedor was home to some of the most brutal men of Bosnia's

war. Of the 74 men publicly indicted by The Hague tribunal, 32, all of them Serbs, are charged with crimes alleged to have been committed in Prijedor.

What happened to transform Prijedor is something that will be seriously contested in Kovacevic's trial. Prosecutors are not revealing their strategy, but they will presumably draw on a 300-page opinion the tribunal issued in the case of Dusko Tadic, the camp guard. It sets out a history of the war in Prijedor, one that largely confirms the judgment of most Western journalists and other independent observers, including a U.N. commission of experts. The judges concluded that Prijedor's camps were part of a well-planned Serb takeover of northern Bosnia.

Alarmed that the breakup of Yugoslavia would create countries where Serbs would be a minority, Serb leaders aimed to unite all the territory where Serbs lived and the land they felt was historically theirs. The Serb strategy was to slice off bits of Bosnia in order to create a contiguous territory with a preponderance of Serbs and join them to Serbia proper. This entailed driving out or killing Muslims and Croats.

In 1991, Serbs in northern Bosnia, under the leadership of the Serbian Democratic Party, or S.D.S., of Radovan Karadzic, began to create parallel governing structures. The Yugoslav Army -- by then a Serb Army -- and various paramilitary groups started to surround the region's cities and set up checkpoints. Kovacevic was a founder of the S.D.S. in Prijedor, where Serbs established a shadow city government in January 1992, along with their own police force and security unit. A propaganda campaign intensified, warning Serbs that "fundamentalist" Muslims and "Ustashe" Croats -- the term refers to Croatia's Nazi puppet state during World War II, which slaughtered hundreds of thousands of Serbs -- were planning another genocide. In the spring of 1992, as Bosnia declared its independence and the Serb Republic broke away, Serb paramilitary units took over the television transmitter in the Kozara Mountains, which overlook Prijedor, blocking the town's access to broadcasts from Sarajevo and Zagreb. Residents could get only Serb TV, whose news essentially consisted of anti-Croat and anti-Muslim propaganda.

In each town the S.D.S. established a Crisis Staff made up of local party leaders, army commanders and police officials. In Prijedor, where the elected government had been led by Muslims, the Crisis Staff staged a coup on April 30, 1992. Beginning in late May, Muslims and Croats were herded into concentration camps. The worst were in an iron-ore mining complex in Omarska, a village a few miles from Prijedor, and at Keraterm, a ceramics factory on the edge of Prijedor.

At least 2,000 men, perhaps many more, were killed in the Omarska and Keraterm camps in the 10 weeks before they were discovered by reporters and closed late that summer. The inmates suffered the worst conditions imaginable: they were starved; forced to live in their own filth; jammed by the hundreds into rooms, so tightly packed that they could not lie down. The city's richest and most powerful Muslims were singled out for special torture. The few women at Omarska were regularly raped and some were killed.

Survivors have reported that some prisoners were decapitated with chain saws. Others were burned alive.

Milan Kovacevic, who had been the city manager before the Crisis Staff was formed, was now the second in command in Prijedor, after the Mayor, Milomir Stakic. He was also everyone's drinking buddy. According to the indictment, the prosecutors will make the case that as vice chairman of the Crisis Staff, Kovacevic helped to plan and organize the camps. They will also argue that he knew, or should have known, that Croats and Muslims were being murdered and abused inside them, the aim being, according to the indictment, "to destroy them, in part, as a national, ethnic or religious group." In a word, genocide.

In late February, I traveled to Prijedor with Vucicevic. It was his second trip to Bosnia to search for evidence and interview potential witnesses. Part of his case, he said, would be to prove that while Kovacevic was responsible on paper, in practice he was not. Vucicevic spent much of his time in Prijedor talking to former Crisis Staff members and S.D.S. officials who he hoped would testify that within the Crisis Staff, the military and especially Police Chief Drljaca had been dominant and that they were the ones who organized the camps. Vucicevic maintains that Kovacevic had no interest in his political duties and spent all of his time at the hospital. "He never attended a single Crisis Staff meeting," Vucicevic repeatedly told me. "He did not visit any of the camps."

What did he know? I asked.

"He heard hush-hush things in taverns," Vucicevic said.

I asked when Kovacevic found out about the killings in the camps. Vucicevic declined to answer.

In Prijedor, I met Serbs who had heard about the killings while they were going on. I did not meet anyone who claimed to have seen Kovacevic visit a camp, and the prosecutors declined to talk to me about their evidence before the trial. In evidence disclosed by prosecutors to the defense there is a witness who claimed to have seen Kovacevic in the Omarska camp several times, but the account contains inconsistencies.

Still, Keraterm is right on the main highway, and anyone driving into Prijedor would have been able to see the prisoners in the barred doorways of their cells. I spoke with a credible source, a man afraid to be named or identified in any way, who had attended a Crisis Staff meeting at the military police headquarters directly across the highway from Keraterm in the final weeks of the camp's existence. He said that although Kovacevic didn't speak much, he was among a handful of people present at the meeting.

Minka Cehajic is a Muslim from Prijedor now living in Sanski Most, a town that is today home to many of Prijedor's surviving Muslims, and her story suggests that Kovacevic had more power during the war than he contends. Minka's husband, Muhamed Cehajic, was Prijedor's Mayor until the Crisis Staff's coup. Minka was told after the coup that her

husband was being detained in a police jail but that she could not get in to see him. She ran into Kovacevic on the street and asked him for help. She said that he called the police and got her in to see her husband. She visited him twice; when she went back a third time, he was no longer there. Minka called Kovacevic again, but was told he was in a Crisis Staff meeting. Her husband was taken to Keraterm, and then to Omarska, where he was killed.

On Aug. 2, 1992, Roy Gutman of Newsday broke the story of Omarska and Keraterm, based on interviews with survivors. Radovan Karadzic, in London for a meeting, went on television to deny reports of atrocities in the camps and invited those interested to go see for themselves. The television network ITN and a reporter for The Guardian, Ed Vulliamy, took him up on it and flew to Belgrade the next day. They arrived in Prijedor on Aug. 5 and went to the Crisis Staff offices, where they first spoke to Col. Vladimir Arsic, the local military commander. "I do not have the authority to allow you to go to Omarska," he said. "Talk to the civilians." He gestured at Mayor Stakic and Kovacevic.

Kovacevic gave the journalists a lecture on Greater Serbia. "The first and main duty imposed on Serbs today is to create and organize a homogenous Serbia to encompass the whole ethnic region in which the Serbs live," he said. Then he told them they could go to the camps. A few days later he let another group of journalists into Omarska, after a similar lecture.

"He was saying that extremists should be separated," Vucicevic told me, by way of explaining "Greater Serbia." "And he was singled out to do briefings for reporters not because he was in charge, but because he was educated in Europe."

There is no how-to manual for defending a man accused of genocide, because it has virtually never been done. Last month the Rwanda tribunal completed the first international trial for genocide, but it has not yet issued a verdict in the case of Jean-Paul Akayesu, a Hutu Mayor accused of ordering the deaths of 2,000 Tutsis. So how certain precedents are applied, what the prosecutor needs to prove, what can be argued – the three judges who will hear Kovacevic's case and reach a verdict will sort these things out as the trial proceeds.

A trial at the tribunal is the legal equivalent of gathering people from all over the world to put on a play in an Esperanto that no one has really learned. Attorneys question witnesses from a far-off country in a foreign language. Almost everyone who works there has come from someplace else and must travel elsewhere to investigate cases. It is startling to see the United Nations flag next to the judges' bench, to realize that if the tribunal labeled its cases the way American courts do, the case would be called *The World v. Kovacevic*. (It is actually *Prosecutor v. Kovacevic*.)

The tribunal is dealing with a body of law that has, for the most part, never been applied, and international law has no "supreme court" to indicate which interpretations and decisions are "right." Bootstrapping is inevitable. The tribunal draws its precedents mainly from a limited group of international legal forums -- Nuremberg and Tokyo; the

International Court of Justice, which adjudicates civil cases between nations, and regional courts like the Inter-American Court of Human Rights in San Jose, Costa Rica, and the European Court of Human Rights in Strasbourg, France. But the judges also raid national court decisions when they feel like it.

Such improvisation taxes a defendant's ability to mount a proper defense. Even well-trained and aggressive defense lawyers can have trouble. Michail Wladimiroff and Alphons Orié, the Dutch criminal lawyers who represented Dusko Tadic, the camp guard, were not accustomed to cross-examining witnesses, which in the Continental system is handled mainly by a judge, and had to take a training course and study a video to learn how to do it. They ended up recruiting one of their trainers to handle cross-examinations.

A larger problem for defendants is their very choice of lawyers. The quality of counsel has improved since pay was raised two years ago to \$110 an hour, up from \$200 per day. But problems remain. Defendants before the tribunal at The Hague generally choose lawyers of their own ethnicity from the former Yugoslavia, not trusting others to fight on their behalf. The courts in Belgrade and Zagreb are highly politicized, and lawyers used to practicing before these courts are not trained to be assertive and know little about international law. Such lawyering creates delay and embarrassment. For instance, the tribunal's appeals chamber dismissed Drazan Erdemovic's plea of guilty to crimes against humanity because it felt his attorney had not sufficiently informed him of the consequences of his plea. Erdemovic later pled guilty to a lesser charge.

While it is clear that the tribunal needs to raise its standards for defense counsel and give attorneys training and legal advice, the judges themselves, who hail from 11 different countries, and their efforts to compensate for some of the attorneys' deficiencies are frequently praised. Even Vucicevic appears to have come around. "All those things I said about the unfairness of the tribunal -- I take them all back," he said, elated, after winning a recent motion.

Vucicevic's major complaint is that the tribunal is not paying enough attention to Kovacevic's physical well-being. Vucicevic spent the fall fruitlessly trying to have Kovacevic released because of poor health to await trial back in Bosnia, and argues that Kovacevic has not received the medical attention he needs in jail. Vucicevic is also in a state of war with the registrar, the administrative office of the tribunal. Preparing a case of the scope and magnitude of Kovacevic's demands a team of attorneys and plenty of money for investigations and experts. But one month before the trial is scheduled to begin, Vucicevic has not been able to hire much help besides D'Amato. He says that the registrar is three or four months in arrears paying his bills. But money is a problem for everyone at the tribunal, even with its 1998 budget of \$64 million. Prosecutors have had to curtail investigations, and now, with 25 men in custody, their staff is stretched thin.

This January, 10 months after Kovacevic was indicted for complicity in genocide, prosecutors asked to add 14 counts, including murder, torture, crimes against humanity, war crimes and grave breaches of the Geneva Conventions. Most counts stemmed from the same crimes as the charge of genocide. If the judges permitted prosecutors to expand

the indictment, it would greatly increase their chance of convicting Kovacevic, because any genocide conviction probably requires proof of some degree of intent on the part of the defendant.

The lawyers at the Feb. 27 hearing on expanding the indictment wore black robes and ascots; the judges were resplendent in red robes. But the majestic effect was lost in a building that greatly resembles an insurance office, which in fact it used to be. Kovacevic, flanked by two guards, sat behind his attorneys; above him were the glass booths built for the simultaneous translators. The lawyers and judges used French or English, but the defendants all spoke what the court lists as "Bosnian, Serbian and Croatian" -- a language once known as Serbo-Croatian. A glass wall separated the public. During a break, Vucicevic pointed me out, and Kovacevic nodded at me.

The prosecution was represented by Michael Keegan, a former U.S. Marine Corps Judge Advocate General, who was on crutches after having broken his leg skiing. Keegan argued that he had informed the defense at the time of Kovacevic's arrest that the prosecution intended to broaden the indictment, mainly with what in the United States would be called "lesser included" offenses -- lesser charges for the same acts.

Then D'Amato began the defense reply. Working from yellow Post-Its he had plastered on his lectern, D'Amato argued that amending the indictment six months after arrest was too late and that the delay violated Article 9 of the International Covenant on Civil and Political Rights, which covers the right to a speedy trial, among other things. Vucicevic followed with a vintage performance, racing from point to point. He questioned the credibility of the witness who said he saw Kovacevic in the Omarska camp, argued that civilians on the Crisis Staff had no authority and started in on the history of Yugoslav Communism. The presiding judge, Richard May, gently interrupted him. "It seems we are entering the realm of argument about the merits that is more appropriate at trial," he said.

But the defense won. While the prosecutor is currently appealing, it is very likely that Kovacevic will be tried solely for complicity in genocide. He is indicted under three different parts of the tribunal's statute, which allow the tribunal to punish those who aided in the planning and execution of genocide, those who committed acts that made them accomplices to genocide and those with command responsibility.

D'Amato remains worried, especially because of a case known as "Yamashita." Gen. Tomoyuki Yamashita commanded the Japanese Army in the Philippines during World War II. An American military tribunal sentenced him to hang because his men had committed atrocities that he did not prevent. There was no evidence that he knew of the atrocities, but the court ruled that he should have known about them and had failed to prevent them.

Over dinner in The Hague, D'Amato had said that he takes "Yamashita" to mean that if at some point Kovacevic knew of the killings and could have stopped or limited them and did not, he would be culpable. "There is an opening for the prosecutor," he said. "If there weren't, this wouldn't be a case."

Vucicevic maintains, by contrast, that it would suffice to prove that Kovacevic was out of the loop. As for the other aspects of the crime, Vucicevic argues that the prosecutor must show that Kovacevic intended to commit genocide. Vucicevic contends that Kovacevic had no such intent, in part because he treated Muslims at Prijedor's hospital during the war.

International-law experts say it isn't clear whether such intent is necessary to convict, because Kovacevic is accused not of genocide itself but of complicity in genocide. It might be enough to show that he deliberately contributed to the crime even though he may not have had genocidal intent, said Diane Orentlicher, a professor at American University's Washington College of Law and director of its War Crimes Research Office. "Suppose someone built gas ovens knowing how they'd be used in the Holocaust, but didn't carry out the gassings himself," Orentlicher hypothesized. "He might not have shared Hitler's genocidal intent, but might well be liable to punishment as an accomplice to genocide."

It is easier to convict Omarska's guards, the men who personally tortured and killed, whose crimes were witnessed by dozens of people. The role of the higher-ups is more elusive. According to D'Amato, Karadzic wrote orders telling his men not to commit war crimes and warning that anyone who did would be prosecuted -- an utterly cynical exercise, if in fact he did do it, but one that could keep him out of prison: the commanders weren't really commanding, couldn't have done anything, had no control, didn't plan it, couldn't have stopped it, didn't know.

Showing that Kovacevic had no responsibility for the events in Prijedor was one aspect of the strategy Vucicevic outlined during the trip. The other was to argue that what happened in Prijedor was not a Serb-organized genocide at all. In fact, he was looking for evidence that the Muslims in and around Prijedor were planning a genocide of their own - - that the Serbs, in rounding up Muslims, acted in self-defense.

D'Amato strongly disagreed with this strategy, in part for tactical reasons: he thought that contesting the prosecutor's assertion that what happened to the Muslims was genocide would bring a parade of unhelpful witnesses testifying about the atrocities they suffered in the camps. "This court was set up to investigate genocide," he said. "I'm not sure they would be prepared to say it didn't occur." His view that the no-genocide defense was doomed was echoed by every non-Serb lawyer I asked about it.

"Any claim to justify genocide on the grounds that it is designed to prevent genocide by an adversary, a sort of anticipatory genocide, is simply beyond the pale," said Theodor Meron, Denison Professor of International Law at New York University Law School. "In international law's hierarchy of prohibitions, those of genocide and crimes against humanity are absolute. There are no exceptions."

Vucicevic, for his part, said he has no intention of acknowledging that there was a Serb-led genocide. "Let's be good old-fashioned defense attorneys and make them prove every point," he told me at first. But as I spent more time with Vucicevic in Prijedor, it became

evident that his real reason for denying that genocide had been carried out was that he believed his people had been maligned in the press and wanted to correct the record. "D'Amato's been prejudiced by media stories and pictures," he said.

D'Amato had told me that many Serbs believe something "a little schizo: it's not genocide, but if it is, it's totally justified." Most of the Serbs I met in Prijedor hold this view. More disconcerting, at times so did Vucicevic. He seemed fully aware of the tensions between the American and Serb inside him. "I get so mad at everyone here for the war," he said. "But I guess I have some of these genes myself."

Though there are undoubtedly Serbs in Prijedor who would say out loud that Muslims were victims of Serb atrocities, what I found was a list of excuses and justifications, often contradictory. Typical was the view of Zoran Baros, then as now the director of the propaganda-spewing Radio Prijedor, who said that the Serbs had to act to prevent a takeover of Prijedor by Muslim extremists. And this from a high-ranking Prijedor police official who spoke only on condition of anonymity: "Write about the 11,000 Serb children killed in the Kozara Mountains in World War II. Perhaps you will have a deeper understanding of why this happened in 1992."

Since most of these men began our conversations with a denunciation of the anti-Serb foreign media, I was not expecting any of them to unburden their consciences to me. They were also aware of the tribunal's secret list. But the justifications were not invented for my benefit. The imminent Muslim genocide and the victimization of Serbs were themes of the war.

The Serbs have been victims many times this century. The Ustashe Nazi puppet state in wartime Croatia had promised to kill, deport or convert to Catholicism the Serbs in Croatian territory. Because Serb partisans were particularly active in the Prijedor area, which borders Croatia, it was the scene of some of the worst killings of Serbs, including Serb children. The German Army also participated. Among those in the German Army in the Kozara Mountains at that time was Kurt Waldheim, which does not inspire Serb confidence in the United Nations. The Ustashe concentration camp of Jasenovac is an hour's drive from Prijedor. Tens of thousands or hundreds of thousands of Serbs, depending on who does the counting, were murdered there. Many were killed with a brutality later to be echoed in Omarska. This is not a coincidence.

Kovacevic says he himself was interned as a baby in a Croatian concentration camp, although he is not sure which one. Almost every person I met in Prijedor replied to my questions about 1992 with references to 1942. This history made the propaganda believable to ordinary Serbs. A psychopath with a television station seems to be a necessary ingredient of modern genocide, but so does a historical resonance. (In Rwanda, genocide was sparked by a radio station that stirred up Hutu memories of victimization.) Television did not have to tell the Serbs, Go kill your neighbor. It was enough to tell them, Your neighbor is coming to kill you.

The Kovacevic family lives in a comfortable but not luxurious apartment on the fourth floor of a building at the edge of downtown, with firewood piled up in the yard and chickens scratching in the dirt. When I first visited the apartment, Kovacevic's 24-year-old son, Ljubo, was sitting on a leather couch in the living room, watching music videos on Sarajevo TV. When the news came on, showing Bosnia's President, Alija Izetbegovic, Ljubo jumped up in mock respect. He had once studied to be a veterinary technician, but now he mostly hung out, unemployed, like almost everyone in Prijedor.

Kovacevic's wife, Ljubica, a teacher of retarded children, brought out a cheese pie, salad, cake and a bottle of her husband's excellent homemade plum brandy, even though we were about to go out to eat. People have treated her well, she said, though she does get phone threats from one Muslim man -- whose voice she thinks she recognizes. We all went to dinner at the Balkan Express, a restaurant on the highway outside town that Kovacevic had considered his second office. Over very loud Serb folk songs sung by a woman with frosted hair and white high heels, Vucicevic and Zoran Baros, the Prijedor Radio boss, talked about supposed Muslim arms caches in Kozarac.

Ljubica Kovacevic mused: "It's the journalists who started the war. They showed us pictures of dead Serb children."

"That wasn't journalism," I said. "That was propaganda."

"I don't know what it was," she said. "It's what I saw."

Mostly, though, Ljubica sat silently, her thoughts obviously far away, saying at one point, "It's so despicable that a victim has to prove he's innocent."

It is not clear whether the people I talked to in Prijedor do not believe the reports of atrocities in Omarska and Keraterm or are simply lying.

On my last day in town I went to lunch with Vucicevic and the Kovacevic family at a restaurant near the hospital. At another table was Gojko Klickovic, the Prime Minister of the Serb Republic from May 1996 until three months ago and now head of the S.D.S. I went over with Vucicevic, and when the conversation turned to the war I asked how many people had died in the concentration camps. "People couldn't have died in concentration camps, because we didn't have them," Klickovic said. "We had detention camps, where people came beginning on the first day because it was the safest. The Red Cross then allowed them to relocate."

Back at our table, Vucicevic and I got into an argument. "He's not credible," I said.

"Maybe he didn't know," Vucicevic replied.

Of all the views I heard, Vucicevic's were the most disquieting. At times he was willing to acknowledge the horrors of the camps, at times he played them down and at times he

excused them. "In tribal societies you have revenge and retaliation as justice," he said. "For 500 years, Serbs haven't known anything else."

Whatever bad happened was ordered from Belgrade, Vucicevic said, but he also often spoke of the Muslim threat. He gave me articles on genocide against the Serbs and recommended that I read a book on the Turkish genocide of Armenians, to show me what Muslims were capable of. When we were driving around Prijedor, he sometimes gave people we passed the three-fingered Serb salute, a sign used today by only the most nationalist Serbs. He also said: "When I heard Serbs were accused of raping Muslim women I had to laugh. When I was young we always joked that no one would want a Muslim because their personal hygiene is not too good."

Omarska, the former iron-ore mine, is today a military base for the Serb Republic's Army. Keraterm is starting to make ceramic tile again. Practically no Muslims have returned to live in Prijedor itself. In early March a few were beginning to commute daily from Sanski Most. One commuter was Muharem Murselovic, Prijedor's new Deputy Mayor -- elected because the surviving Muslims came back in large numbers to vote in municipal elections in September. He had been imprisoned in Omarska in the summer of 1992 and beaten repeatedly. Some of his Serb colleagues in the municipal building today had helped send him to the camp, he told me. "If they are uncomfortable to see me, that's their problem," he said. "I can look everyone in the eye."

The tribunal has improved the quality of leadership in Prijedor -- mainly by ridding the city of Drljaca, the former Police Chief, who continued to blow up Muslim houses and sponsor attacks on Muslims long after the war ended. And The Hague tribunal is scaring other wartime leaders. I heard a high-ranking police official ask Vucicevic if he knew which other names were on the sealed indictments list, and Vucicevic said that others had asked as well. He said that there are three or four former Crisis Staff members still in Prijedor but that they are keeping their heads down. Milomir Stakic, the former Mayor and Crisis Staff chief, who is probably on the list, is nowhere to be found. The tribunal is so present in the minds of Prijedor Serbs that the local prosecutor has been nicknamed Goldstone, after Richard Goldstone, the South African jurist who was the tribunal's first prosecutor.

After the hearing that quashed the expanded indictment, Vucicevic did phone interviews with radio stations all over the Serb Republic, telling them that for the first time a Serb defendant had won a victory at the tribunal. Such statements are important to counter the near-universal belief among Serbs that the tribunal is an anti-Serb instrument. The local media, of course, depict it that way.

This will have to change if the tribunal is to meet the ambitious goals of its founders. The tribunal's only legitimate purpose -- the only purpose a court can have -- is to mete out justice. But a successful tribunal will do other important things. On a practical level, it appears that fear of the tribunal may be preventing Serbian leaders from intensifying their violence in Kosovo, where tribunal prosecutors are beginning investigations. Beyond this, the tribunal makes a moral statement, showing that some crimes are so heinous that

the whole world condemns and punishes them. Like Nuremberg's, its decisions will trickle into international treaties and national legal codes: thanks to Nuremberg, for example, most nations hold that soldiers cannot evade responsibility for illegal acts by pleading that they were following orders.

A successful tribunal may encourage the world to establish a permanent international criminal tribunal, which the United Nations is now discussing. It might also encourage the world's powers to examine their own roles in the tragedy of Yugoslavia and strengthen their resolve to prevent genocide the next time rather than settling for judging its perpetrators.

The tribunal's most fervid supporters have made more extravagant claims for the court as well. They believe the tribunal can discourage blind ethnic hatred by showing that responsibility rests with individuals, not whole groups. They see the tribunal as a means to promote tolerance by smashing the cherished myths of victimhood, demonstrating to people that individuals in their own ethnic group can also do evil.

Justice has helped to demolish nationalist myths. It did so in Japan and Germany. In these countries, however, justice was accompanied by Allied occupation. NATO's mission in Bosnia is no such occupation. Just as crucial, the myths of Nazism and Japanese imperialism did not truly die until they were discredited by the Germans and Japanese themselves, and this took time.

Time will not produce the same reckoning in the former Yugoslavia without efforts by the Serbs and Croats themselves, efforts like trials of their own war criminals or a South Africa-style truth commission that encourages the perpetrators to confess. Communism's state-enforced unity kept the Yugoslavs from dealing with World War II atrocities, and now nationalist governments, especially those in Serbia and Croatia, perpetuate the story of national victimhood. Fear is powerful, rationalization easy and remorse painful; truth will win out only if the message comes from one of your own.

There is one Prijedor leader who seems to be remorseful about the events of 1992. That is Milan Kovacevic. Not that he has abandoned the gospel of Greater Serbia. In 1996, Ed Vulliamy of The Guardian, who had listened to Kovacevic's speech on the subject four years earlier, sought him out again. Kovacevic reiterated the importance of making the area free of Muslims. But as the bottle of slivovitz came out, a different man emerged according to Vulliamy. "Omarska was planned as a reception center," Kovacevic said after four glasses. "But then it turned into something else. I cannot explain this loss of control. I don't think even the historians will explain it in the next 50 years. You could call it collective madness." He resigned from the Crisis Staff in December 1992. He left political life "because I saw many evil things," he told Vulliamy. "That is my personal secret. If you have to do things by killing people, well...now my hair is white, now I don't sleep too well."

Don't take that as an admission, D'Amato said; Kovacevic's anguish and remorse came after the war, when he learned what others did, and are not legally relevant. That is for

the tribunal to decide. But the agonies of a drunk are relevant in other ways, if only Serbs could hear them. The tribunal may help prevent the next Balkan war by imprisoning some of the criminals of the last one and discouraging those who would follow. But its decisions will always be those of outsiders, powerless against the overwhelming emotional weight of Jasenovac, of 11,000 children murdered in the Kozara Mountains; against that malignantly selective memory that embraces ethnic hatred. Only anguish and remorse from those who once preached it can persuade people that they are human beings as well as victims, that those who remember history are also condemned to repeat it.

Photos: Above: Kovacevic, when he was second in command of the Crisis Staff that ran Prijedor during the war. Opposite: Among the Crisis Staff's actions was the shelling of the Muslim village of Kozarac.; Opposite: Kovacevic's defense team of Vucicevic (right) and D'Amato. Vucicevic's strategy is to play the victim card -- to argue that the Serbs of Prijedor were defending themselves against a coming Muslim onslaught. Above left: Vucicevic at Keraterm, a ceramics factory on the edge of Prijedor that served as a concentration camp for Muslims and Croats. Above right: The main building at Keraterm, where prisoners were detained.; Above: Muslim concentration camp inmates. Serbs in Prijedor vehemently claim that this picture was staged. Opposite: The "White House" at Omarska, where prisoners were tortured.; Vucicevic with Kovacevic's wife, Ljubica, and son, Ljubo. "It's so despicable," she said, "that a victim has to prove he's innocent."

(Laurent Van Der Stockt for The New York Times; Boris Geilbert/G.A.F.F./SIPA; ITN/F.S.P./Gamma Liaison)